IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No. 260 of 2006
in
Family Court Appeal No. 103 of 2005

Mr.Valamparambil J.Joseph ..Appellant

vs.

Mrs.Bilquis Joseph Quraishi ..Respondent

Shri S.N.Acharya for appellant
Shri V.C.Ghosalkar for respondent.

**CORAM: S.B.MHASE AND**
**Smt.V.K.TAHILRAMANI JJ.**
**8th January, 2007**

**P.C.**

1. Heard the learned Counsel.

2. We have separately passed the order giving certain clarifications and making observations in F.C.A.No.112 of 2006. This Civil Application is for restoration of the Family Court Appeal no.103 of 2005. This appeal arises as against the decree passed in Petition No.A-362 of 1996 and A-1172 of 1996. Petition No.A-362 of 1996 was filed by the respondent wife for restitution of conjugal rights and also claimed joint ownership, possession and injunction in respect of flat no.C-4, Rishikesh II, Evershine Nagar, Malad, Mumbai. Petition No.A-1172 of 1996 was filed

by the appellant/husband for divorce. The said divorce petition filed by the appellant-husband has been dismissed so also the petition filed by the wife for restitution of conjugal rights has been allowed but the prayers of the wife in respect of flat No.C-4, Rishikesh II, Evershine Nagar, Malad claiming joint ownership and possession and injunction has been dismissed by the Family Court. Challenging this decree Family Court Appeal No.103 of 2005 was filed by the husband. However, the appeal was dismissed for default since no one appeared by order dated 29th November, 2005. In order to set aside the said order the present civil application has been taken out. It is interesting to note that when this appeal was disposed of according to the applicant there was no appeal filed by the respondent wife. It appears that Appeal No.112 of 2006 which we have separately disposed of was noticed by the present appellant and,therefore, he thought it fit that now it is appropriate to pursue his own appeal. In fact, he was satisfied with the dismissal order and was not interested in pursuing the appeal. Now, he desires to pursue the same because the wife has filed an appeal. That cannot be a ground for setting

aside the impugned order. In short, what appears that initially the appellant husband filed the appeal and it was dismissed. He was satisfied with the dismissal. Now having noticed that wife has also filed appeal he wants to pursue his appeal and, therefore, the present civil application for restoration of the appeal. Net result is that pursuation of the appeal is only a counterblast to the appeal of the wife. However, the appeal filed by the wife has been disposed of by us by separate order and, therefore, filing of an appeal by the wife cannot be a ground for setting aside the order of dismissal of the appeal. Apart from this no ground has been made out as to why the order of dismissal should be set aside by this Court. It is interesting to note that the order for dismissal was passed on 29th November, 2005 and the application for restoration has been filed on 6th November, 2006 i.e. practically after a period of one year. No proper and/or sufficient reasons have been given by the appellant explaining his conduct as to why he could not prefer or what incapacitated him from preferring the application earlier for setting aside the order of dismissal for default which was passed by this Court on 29th

November,2005. On going through the Civil Application, we are satisfied that the civil application does not explain the delay by giving sufficient and cogent reasons for condonation of delay in preferring the present application on the part of the appellant. The total result is that this civil application is only a counterblast to the appeal filed by the wife. It is not a genuine desire to pursue the appeal and, therefore, we are not inclined to entertain the present civil application. Civil Application is hereby rejected.

**(Smt.V.K.TAHILRAMANI J.)** **(S.B.MHASE J.)**